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BIBLICAL INTERPRETATION, CONSTITUTIONAL INTERPRETATION, AND IGNORING TEXT

HENRY L. CHAMBERS, JR.*

I. INTRODUCTION

Much is made of how to interpret the Constitution.¹ The Constitution is foundational and its law is the highest law in the land. Consequently, interpreting the Constitution correctly is important, not only so that the Constitution's words are honored but so that its ideals are honored. Similar desires accompany the interpretation of other important documents. Indeed, how a sacred text like the Bible is or can be interpreted may shed light upon how the Constitution could be or should be interpreted.² This brief Essay considers how a particular vision of Christian biblical interpretation can inform constitutional interpretation.³ This Essay does not necessarily endorse the use of the interpretive method presented. Rather, it suggests merely that an interpretive method that may be used to interpret one sacred text might have resonance when considering the possibilities of interpreting another arguably sacred text.

The method of biblical interpretation that I present has two core components. The first component focuses on using a small number of principles and events to guide interpretation of the entire document. The teachings and ministry of Jesus Christ provide the principles for this model of biblical interpretation. That a particular set of

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1. Indeed, sitting Supreme Court Justices have written in some depth on constitutional interpretation. See, e.g., STEPHEN BREYER, *ACTIVE LIBERTY* 5 (2005) (urging that courts take account of constitutional goals of participatory democracy when interpreting the Constitution); Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in *A MATTER OF INTERPRETATION* 3, 37–47 (Amy Gutmann ed., 1997) (promoting textualism and originalism as the proper modes of constitutional interpretation).

2. The Bible referenced is the Christian Bible. See *THE CATECHISM*, reprinted in *THE BOOK OF COMMON PRAYER* 853 (1979) (“The Holy Scriptures, commonly called the Bible, are the books of the Old and New Testaments; other books, called the Apocrypha, are often included in the Bible.”); see also N. T. WRIGHT, *SIMPLY CHRISTIAN* 175–80 (2006) (discussing what books have historically been included in the Bible and those that have not). For the purposes of this Essay, I will reference the New International Version of the Bible.

3. The form of interpretation is centered on Episcopalianism and Anglicanism, but is not necessarily peculiar to that Christian denomination.

principles would illuminate the whole of a document is not particularly odd. Given, however, that the life of Christ occurred well after significant portions of the Bible were written, referencing Christ's ministry to interpret portions of a text that predates Christ may seem a bit strange. Nonetheless, the Old Testament must be interpreted by Christians through the lens of Christ's ministry and teachings rather than vice-versa. The New Testament also must be interpreted in similar fashion, but without nearly the problems related to the sequencing of events.⁴ Just as important, the interstices in the Bible must be filled only with interpretations consistent with the principles of Christ's ministry. The focus on Christ's ministry leads to the second key component. The second component allows for ignoring biblical text that is plainly inconsistent with the core principles of Christ's ministry, even when the text appears clear and even when the problematic text was written before the core principles were developed.

As applied to the Constitution, the interpretive method suggested above would take core constitutional principles and beliefs and place them at the center of the interpretation of specific clauses of the Constitution. As explained below, the vision of equality largely, but not fully, embodied in the Reconstruction Amendments would most likely provide the core principles for constitutional interpretation. Those principles would be the mandatory lenses through which to view all constitutional text. The interstices of the Constitution, to the extent that those interstices need to be filled, would need to be filled in a way that is consistent with the equality principles embodied in the Reconstruction Amendments. Reading the Constitution through a small set of principles may not be particularly revolutionary.⁵ The interpretive method, however, would also suggest the willingness to ignore clear

4. Less troublesome sequencing problems exist with respect to the interpretation of the New Testament. For example, Saint Paul's writings on the early church—which form a substantial portion of the New Testament—reference a time after Jesus' death, yet were written before the Gospels detailing Jesus' life and ministry were written. See JOHN SHELBY SPONG, *RESCUING THE BIBLE FROM FUNDAMENTALISM* 80–83 (1991) (discussing the sequencing of the writing of the books of the New Testament); WRIGHT, *supra* note 2, at 177–78 (describing the uncertainty surrounding the times at which the books of the New Testament were written). Consequently, we must take Gospels written later in time as the lenses through which to interpret text written earlier in time.

5. Justice Breyer does not exalt any particular canon of interpretation. Rather, he suggests that one should consider the Constitution's overarching theme—active liberty—to interpret the Constitution's text. See BREYER, *supra* note 1, at 6–7 (detailing Justice Breyer's belief that active liberty is the key to understanding the Constitution).

constitutional text that is inconsistent with those principles. That may be more than most are willing to consider.⁶

II. SIMILARITIES BETWEEN THE BIBLE AND THE CONSTITUTION

Similarities between the Bible and the Constitution abound.⁷ The Bible is a constitution for Christians. Its theology tells Christians who they are, indicates how Christians should live, and states what Christians should aspire to be. Similarly, the Constitution is the constitution for Americans. It constitutes the United States as a nation and reflects American aspirations. Indeed, some would argue that the Constitution reflects our civil religion.⁸

Both the Bible and the Constitution were written over time. That a document is written over time allows its adaptation to changing times and places. This is of particular import for the Bible and the Constitution, both of which are historical documents that continue to guide the lives of their adherents or those subject to their commands. That documents contain text from various ages, however, can make interpretation tricky.⁹ Rules applicable in one age can appear odd when applied in a different age.¹⁰ Conversely, rules arguably can be made somewhat timeless if interpreted through a limited, focused set of principles. This can be important particularly for documents, like the Bible and the Constitution, that are used to evaluate and resolve problems.

6. The palatability of rejecting text is not necessarily based on one's political outlook. See SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 87–88 (1988) (noting that faithful interpreters cannot reach just any conclusion they wish when constitutional commands are clear); ROBERT C. POST, *CONSTITUTIONAL DOMAINS* 24 (1995) (“Sometimes, although rarely, the words of the Constitution appear to speak for themselves. In such circumstances the Constitution does not seem to require interpretation.”); Scalia, *supra* note 1, at 37 (“In textual interpretation, context is everything, and the context of the Constitution tells us not to expect nit-picking detail, and to give words and phrases an expansive rather than narrow interpretation—though not an interpretation that the language will not bear.”); Laurence H. Tribe, *Comment*, in *A MATTER OF INTERPRETATION*, *supra* note 1, at 65, 65 (contending that when asking what a “legal text” means, one should generally refrain from inquiring into the “ideas, intentions, or expectations subjectively held by whatever particular persons were . . . involved in drafting, promulgating, or ratifying the text in question”).

7. See JAROSLAV PELIKAN, *INTERPRETING THE BIBLE AND THE CONSTITUTION* 2 (2004) (noting the similarities between biblical and constitutional authority).

8. See, e.g., LEVINSON, *supra* note 6, at 9–53 (offering an extensive historical and interpretive analogy of the Constitution as a sacred text).

9. See Tribe, *supra* note 6, at 83–84 (“Most fundamentally, a text that has a strong transtemporal extension cannot be read in the same way as, say, a statute or regulation enacted at a given moment in time to deal with a specific problem.”).

10. See SPONG, *supra* note 4, at 77 (“So clearly, all of the words of the Bible are not the unchanging ‘Word of God.’ Practices that once were normative for the Bible have become for us either illegal or, in some cases, immoral.”).

The Bible and the Constitution are not merely documents. Both documents provide or structure ways of living.¹¹ As texts for living, what they mean is arguably more important than what they say. Universal agreement exists regarding what the Constitution's words are and some agreement exists in the Christian world regarding the Bible's words.¹² Far less agreement exists regarding what the Constitution or the Bible mean. How the documents are interpreted determines what the texts mean, how they apply to specific situations, and how those subject to their commands will live. Of course, that various people will interpret the documents guarantees that the documents will be interpreted in multiple ways.¹³

The Bible and the Constitution can be interpreted for at least two different, but related, reasons.¹⁴ First, they can be interpreted to determine how their adherents should generally live their lives.¹⁵ They can provide general guidance to keep their adherents tethered to the principles the documents espouse as those adherents go about their lives. In context, the documents may need to be interpreted to ensure

11. Arguably, the Old Testament alone provides a complete way of life:

During many centuries of Jewish history, as the historical books of the Old Testament describe it, the written authority of the Torah, either in creative interaction with the living authority of the prophets or sometimes in tension with it, ordered not only the religious and the liturgical life of the worshipping community, but the morality, diet, and personal hygiene of individuals (as in the Book of Leviticus) and the public and the political institutions of the entire nation (as in the Book of Deuteronomy).

PELIKAN, *supra* note 7, at 16.

12. Of course, the very process of translating the Bible included a substantial amount of interpretation. See *id.* at 108–09 (noting that translation is a form of interpretation). Consequently, biblical interpretation often is the interpretation of an interpretation.

13. Differing interpretations of any document can lead to discord among its adherents. See LEVINSON, *supra* note 6, at 17. Professor Levinson makes the following observation:

[T]here is a double message contained within the analogy of the Constitution to a sacred text or the Supreme Court to a holy institution. The first, emphasizing unity and integration, is the one with which we tend to be most familiar. I propose here, however, to examine the alternative message, which is the potential of a written constitution to serve as the source of fragmentation and *dis*integration.

Id.

14. Of course, the Bible and the Constitution are not to be interpreted for precisely the same reasons. See PELIKAN, *supra* note 7, at 15 (noting that a fundamental difference between the Bible and the Constitution is “the Bible is meant to be prayed and believed, and only therefore acted upon”).

15. How strictly the Bible should be used for guidance has varied among its adherents. See CHRISTOPHER L. WEBBER, WELCOME TO THE EPISCOPAL CHURCH 47 (1999) (“At the time of the Reformation some maintained that Christians should do only what Scripture directly commanded, while others maintained that Christians could do anything except what the Scriptures prohibited.”).

that particular courses of conduct that are not mentioned in the texts are generally consistent with constitutional or biblical principles.¹⁶

Second, the Bible and the Constitution may need to be interpreted to determine whether a specific course of conduct is prohibited by the relevant document.¹⁷ In these situations, the Bible and the Constitution may be sought to be used as codes.¹⁸ Interpreting the documents for specific guidance regarding actual disputes that are not already resolved in those texts, however, can put pressure on those documents to do something they may not have been written to do. Though some parts of the Bible and the Constitution are arguably structured as codes, both documents provide more principles than rules.¹⁹ That the documents reflect standards more than rules means that some behavior that appears to violate Christian principles or constitutional principles may not violate specific textual prohibitions. Nonetheless, a faithful interpretation of either document might require that resolutions deemed acceptable under either document would need to be consistent with the core principles of the relevant document. The next Part notes one approach to biblical interpretation.

III. CHRISTIAN BIBLICAL INTERPRETATION

A. *The Primacy of Jesus' Ministry*

The Christian Bible is composed of the Old Testament and the New Testament. For Christians, the Old Testament covers the Old Covenant that God had with his chosen people, the Hebrews.²⁰ The New Testament chronicles Jesus' life and ministry and reveals the New

16. See ARTICLES OF RELIGION ART. XXXIV, *reprinted in* THE BOOK OF COMMON PRAYER 874 (1979) (noting that there can be diverse traditions and practices in various parts of the church as long as none are contrary to God's commands).

17. Of course, like any document, the Bible can be read in a self-serving fashion. See SPONG, *supra* note 4, at 2 (describing self-serving attempts to read the Bible to justify or encourage segregation).

18. See PELIKAN, *supra* note 7, at 8 (explaining the application of both the Bible and the Constitution to present situations experienced by their adherents).

19. See Tribe, *supra* note 6, at 68 (noting that some of the Constitution's clauses enact "fairly abstract principles" and others enact "quite concrete rules"); WEBBER, *supra* note 15, at 50 ("[T]he Bible is not a rule book . . . The Bible is something quite different; we go to it not to find specific words to answer our questions but to find the Word who created us and knows our need before we ask."); WRIGHT, *supra* note 2, at 186 ("The Bible does indeed contain lists of rules (The Ten Commandments, for instance, in Exodus 20), but as it stands, as a whole, it doesn't consist of a list of dos and don'ts.").

20. See THE CATECHISM, *supra* note 2, at 846 ("The Old Covenant is the one given by God to the Hebrew people.").

Covenant that Jesus brought to any who would become Christians.²¹ Biblical interpretation has always been controversial and is not easy.²² Indeed, Jesus' import to Christians as the Messiah is based in large part on the interpretation of the Old Testament's discussion of the coming of a messiah.²³

Christ's arrival, however, changed how the Bible is to be interpreted, at least by Christians. Christian biblical interpretation occurs through the lens of Christ's ministry.²⁴ Though all of the Bible was inspired by God and is worthy of respect on its own, Jesus was the incarnation of God. His teachings are God's teachings and must take precedence over anything that is inconsistent with those teachings.²⁵ Determining what Jesus is saying to us is, in effect, indistinguishable from determining what God is saying to us.²⁶ It is not that the remainder of the Bible is unimportant.²⁷ It is that Jesus' ministry is the distillation of God's word and, consequently, is special.²⁸

21. See *id.* at 850 ("The New Covenant is the new relationship with God given by Jesus Christ, the Messiah, to the apostles; and, through them, to all who believe in him.").

22. Indeed, the possibility of multiple human interpretations of the Bible appears embedded in the Episcopal Catechism. See *id.* at 853–54 ("We understand the meaning of the Bible by the help of the Holy Spirit, who guides the Church in the true interpretation of the Scriptures.").

23. The Old Testament recognizes that a messiah will come. A question, of course, is whether that messiah has come already. See Jamie Cowen, Editorial, *Affirming Messianic Judaism*, RICH. TIMES-DISPATCH, Jan. 23, 2009, at A13, available at http://www2.timesdispatch.com/rtd/news/opinion/op_ed/article/RLCOWEN_20090122-182708/186089 (describing author's experience as a Messianic Jew); see generally DAN COHN-SHERBOK, *MESSIANIC JUDAISM* (2000) (tracing the development of Messianic Judaism).

24. See WRIGHT, *supra* note 2, at 224–25 ("There *are* rules, of course. The New Testament has plenty of them It isn't so much that we lack clear rules; we lack, I fear, the teaching that will draw attention to what is in fact there in our primary documents, not least in the teaching of Jesus himself.").

25. Though all parts of the Bible are said to be inspired by God, it is possible that some words are more valuable than others, at least in biblical interpretation. See WEBBER, *supra* note 15, at 53 ("[W]e need to understand that when the Prayer Book speaks of the Bible as the 'rule and ultimate standard of faith,' it does not mean that every word of the Bible contains the same authority.").

26. The primacy of Jesus' words and ministry remain viscerally clear. Indeed, many Bibles continue the tradition of printing Jesus' words in a different color than the remainder of the Bible's text. See, e.g., SPONG, *supra* note 4, at 13 (noting that his childhood Bible printed Jesus' words in red).

27. See THE CATECHISM, *supra* note 2, at 853 ("The Old Testament consists of books written by the people of the Old Covenant, under the inspiration of the Holy Spirit, to show God at work in nature and history.").

28. See WEBBER, *supra* note 15, at 66–67 (noting that Episcopal doctrine suggests that "God truly became a human being in the person of Jesus Christ" and that "[t]o say that God became incarnate in Jesus Christ is to say that no fuller expression of God's love for us and will for us can be given").

The primacy of Christ's ministry is particularly important to Christians.²⁹ To the extent that Christ's ministry was in many respects the fulfillment of the Old Testament, the Old Testament is largely consistent with Christ's ministry.³⁰ Interpretations of the Old Testament must be consistent with or must be made consistent with Christ's ministry. To the extent that the New Testament breaks with Old Testament teaching and interpretation, the parts of and practices in the Old Testament that are fundamentally inconsistent with Christ's teaching can be ignored.³¹ Similarly, interpretations of the New Testament—which begins with Christ's ministry and includes teachings of the early Christian church—must be consistent with Christ's ministry.³²

Of course, non-Christians need not consider Christ's ministry to be anything more than persuasive or not so persuasive discussion of Old Testament writings. They can interpret the Old Testament in the same way as they would in the absence of Christ's ministry or can treat the Old Testament as primary and Christ's teaching as secondary, such that any inconsistency between Christ's teaching and the Old Testament can be resolved in favor of the Old Testament's text. In-

29. See WRIGHT, *supra* note 2, at 92 ("Christianity is all about the belief that the living God, in fulfillment of his promises and as the climax of the story of Israel, has accomplished all this—the finding, the saving, the giving of new life—in Jesus.").

30. See *Matthew* 5:17–20 (New International Version). The Gospel of Matthew contains the following:

Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them. I tell you the truth, until heaven and earth disappear, not the smallest letter, not the least stroke of a pen, will by any means disappear from the Law until everything is accomplished. Anyone who breaks one of the least of these commandments and teaches others to do the same will be called least in the kingdom of heaven, but whoever practices and teaches these commands will be called great in the kingdom of heaven. For I tell you that unless your righteousness surpasses that of the Pharisees and the teachers of the law, you will certainly not enter the kingdom of heaven.

Id.; ARTICLES OF RELIGION ART. VII, *reprinted in* THE BOOK OF COMMON PRAYER 869 (1979) ("The Old Testament is not contrary to the New: for both in the Old and New Testament everlasting life is offered to Mankind by Christ, who is the only Mediator between God and Man, being both God and Man.").

31. See ARTICLES OF RELIGION ART. VII, *supra* note 30, at 869. The Article advises the following:

Although the Law given from God by Moses, as touching Ceremonies and Rites, do not bind Christian men, nor the Civil precepts thereof ought of necessity to be received in any commonwealth; yet notwithstanding, no Christian man whatsoever is free from the obedience of the Commandments which are called Moral.

Id.

32. See THE CATECHISM, *supra* note 2, at 853 ("The New Testament consists of books written by the people of the New Covenant, under the inspiration of the Holy Spirit, to set forth the life and teachings of Jesus and to proclaim the Good News of the Kingdom for all people.").

deed, for those who believe the Old Testament to be the unerring word of God, attempts to reinterpret or ignore parts of it merely in light of Jesus Christ's ministry could be viewed as heretical. This viewpoint is consistent with not being a Christian, but does not necessarily require any hostility toward Christianity. Though both a Christian and non-Christian interpretation of the Bible can coexist and lead to similar conclusions regarding how we should live our lives, it may do so purely through happenstance.

Interpreting the Bible through Christ's ministry is not as simple as it sounds. Christ was not always clear in his teachings. Nonetheless, at a general level, Christ provides a simple lens through which to divine the Bible's meaning. Bible passages are read through the lens of Jesus Christ's ministry that is thought by Episcopalians to focus on two key commandments that constitute what is known as the Summary of the Law: "You shall love the Lord your God with all your heart, with all your soul, and with all your mind. This is the first and the great commandment. And the second is like it: You shall love your neighbor as yourself."³³ From this simple command, a Christian interpretation of the Bible can begin. Using this command to interpret the Bible in a traditionally Anglican or Episcopal manner requires that faithful interpreters take Christ's teaching, language of the Scriptures, the traditions of the Anglican Church, and their own reason and intellect to discern the Bible's meaning.³⁴ If, in that process, some of the clear language of the Scriptures must be ignored, so be it.³⁵

B. *Ignoring Text*

One can posit ignoring biblical text.³⁶ If, however, the obligation of Christians is to reconcile Jesus' teachings with all parts of the Bible, it is possible that no text will be jettisoned. Some of the most serious intra-denominational and interdenominational battles in Christianity supposedly focus on which side has faithfully interpreted biblical text. Regardless of the posturing, however, it is fair to say that when a part

33. *Id.* at 851.

34. See WEBBER, *supra* note 15, at 70 ("Anglicans have . . . appealed to Scripture, tradition, and reason as the basis on which to build an understanding of God.")

35. See *id.* at 48 ("Sometimes Jesus himself overrode scriptural commandments with new commands, as in the Sermon on the Mount (Matthew 5:21-48).")

36. Some have even suggested that biblical text can be so troublesome that in parts, it may not fundamentally reflect God at all. See SPONG, *supra* note 4, at ix (noting speech in which the author "had raised questions about how we Christians could continue to call the Bible the Word of God when many of its passages reflected facts that twentieth-century Christians simply do not acknowledge as true and attitudes that twentieth-century Christians do not share").

of the Bible appears to be impossible to reconcile with principles of Christ's ministry, it has to be reinterpreted out of existence or simply ignored. This includes parts of the Old Testament and the New Testament, both of which are nevertheless considered by Episcopalians to be the work of humans inspired by God.³⁷ No matter how orthodox a Christian group claims to be, parts of the Old Testament will be ignored. This is clear in a recent dispute between groups in the Episcopal Church. Though one side claims to read the Word more faithfully than the other side, both sides forswear some of the Bible's text.

1. *The Legal Case*

The United States Supreme Court has made clear that courts are not supposed to become involved in disputes regarding religious doctrine and orthodoxy.³⁸ When ecclesiastical matters are important to resolving a case, however, courts may be required to intervene even as they claim to avoid such entanglements. The Virginia state courts have been enlisted to resolve a dispute between the Episcopal Diocese of Virginia ("Diocese") and a group of breakaway congregations that have declared themselves separate from the Diocese.³⁹ Whether the breakaway group can leave the Diocese is not the key dispute. The key dispute is whether the breakaway parishes can keep the church property that both they and the Diocese claim to own.⁴⁰ Though the Circuit Court of Fairfax County, Virginia, has claimed that the property issue is not related to doctrine,⁴¹ the case arguably already has spawned an issue of doctrine and orthodoxy.

37. See THE CATECHISM, *supra* note 2, at 853 (noting that the Bible is called "the Word of God because God inspired their human authors and because God still speaks to us through the Bible").

38. See, e.g., *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (observing that courts are prohibited from resolving church disputes on the basis of religious doctrine and practice) (citations omitted).

39. The legal case is detailed in Letter Opinion on the Constitutionality of Va. Code § 57-9(A), *In Re: Multi-Circuit Episcopal Church Prop. Litig.*, CL 2007-0248724, 2008 Va. Cir. LEXIS 85 (Va. Cir. Ct. June 27, 2008), and Letter Opinion on the Applicability of Va. Code § 57-9(A), *In Re: Multi-Circuit Episcopal Church Prop. Litig.*, CL 2007-0248724, 2008 Va. Cir. LEXIS 22 (Va. Cir. Ct. Apr. 3, 2008). For a thorough collection of news and documents related to the trial and appellate phases of this litigation, see http://www.thediocese.net/News_services/property.shtml.

40. See *Episcopal Church Prop. Litig.*, 2008 Va. Cir. LEXIS 22, at *78-80 (outlining the procedural history of the case, which arose out of a complaint against the breakaway ministries for trespass, conversion, and illegal alienation of church property).

41. See *Episcopal Church Prop. Litig.*, 2008 Va. Cir. LEXIS 85, at *69-86 (rejecting an argument that the statutory provision requires the court to decide religious questions).

The circuit court has focused on determining how a particular Virginia statute, Code of Virginia Section 57-9,⁴² applies to the dispute.⁴³ The statute allows congregations that decide between belonging to two branches of the same church to make that choice and retain parish property.⁴⁴ In one of its rulings, the court determined that it could apply the statute to the litigation without determining matters of church doctrine.⁴⁵ Consequently, the court ruled that the statute is not unconstitutional on its face.⁴⁶

Though the circuit court was adamant in its stance that it would not have to decide church doctrine issues, it almost certainly is incorrect. The statute at issue arguably is not applicable unless the congregations have a choice in deciding which church to join.⁴⁷ The Episcopal Church of the United States of America (“ECUSA”) is a hierarchical and territory-based church.⁴⁸ It is recognized as the Anglican Communion’s church in the United States, and the Diocese of Virginia is the ECUSA’s recognized diocese for the localities where the breakaway parishes are located.⁴⁹ Consequently, it is possible that there is no cognizable choice regarding which branch of the Episcopal Church a parish wishes to join.⁵⁰ That is, until the ECUSA ceases to be the Anglican Communion’s recognized church in the United States or until the Diocese of Virginia ceases to be the ECUSA’s diocese for the covered territory, a choice to leave the Diocese and associate with another group is not a choice between two branches of the same church, but a decision to leave the Episcopal Church. From a doctrinal perspective, choosing to leave the Diocese of Virginia to join another Anglican group may be akin to joining a different denomination entirely, even if the other Anglican group has ties with the world-

42. VA. CODE ANN. § 57-9 (2007).

43. *See supra* note 39.

44. VA. CODE ANN. § 57-9.

45. *Episcopal Church Prop. Litig.*, 2008 Va. Cir. LEXIS 85, at *69–86.

46. *Id.* at *93.

47. *See In Re. Multi-Circuit Episcopal Church Prop. Litig.*, CL 2007-0248724, 2008 Va. Cir. LEXIS 22, at *87–88 (Va. Cir. Ct. Apr. 3, 2008) (explaining the Episcopal Church and Diocese’s argument that the statute would not apply until the church’s hierarchy had itself recognized a “division”).

48. *See id.* at *8–21 (outlining the structure of the church and Diocese).

49. *Id.* at *8–10.

50. *See id.* at *87–88 (“Because the governing authorities of the ECUSA/Diocese have not acknowledged the occurrence of a division, the ECUSA/Diocese argue that there is no division here under 57-9(A).”) (italics in original). The church and Diocese have continued to advance this argument in briefs filed before the Supreme Court of Virginia. *See, e.g.*, Petition for Appeal at 10–24, *Episcopal Church v. Truro Church*, No. 090683 (Va. Apr. 7, 2009), available at http://www.thediocese.net/News_services/property_appellate.shtml.

wide Anglican Communion.⁵¹ This is not necessarily the only way to interpret ECUSA doctrine, but coming to a different conclusion would seem to require the reinterpretation of church doctrine.

Apart from the issue of whether the breakaway parishes are leaving the ECUSA is whether the breakaway parishes are, in choosing to align with other organizations, joining organizations that are the true heirs of the Anglican tradition. The breakaway parishes believe that the organizations that they are joining are maintaining orthodox Anglican thought and that the ECUSA has abandoned orthodoxy to the point that it has left the Anglican fold.⁵² Understandably, this is an issue that courts do not want to decide and appear unable to decide under United States Supreme Court doctrine.⁵³ Which entity—the ECUSA or the organizations joined by the breakaway parishes—is the true repository of Anglican orthodoxy in the United States is important, however. That issue, as illuminated in large part through the debate about the role of gay people in the church and to a lesser extent the role of women in the church, is the core of the dispute between the ECUSA and the breakaway parishes.⁵⁴ It is more central to the real issue underlying the breakup than the issues the courts are willing to decide. The issue relates to biblical interpretation.

2. *Orthodoxy and Ignoring Text*

A core issue in the dispute between the breakaway parishes and the Diocese of Virginia/ECUSA is the role of gay people in the church.⁵⁵ In 2003, the General Convention of the ECUSA approved the Diocese of New Hampshire's decision to elect the Reverend V. Gene Robinson, a non-celibate gay man, bishop.⁵⁶ This decision is not the only one on which the breakaway parishes differ from the Dio-

51. See *Petition for Appeal*, *supra* note 50, at 19–22 (arguing that the breakaway congregations have not joined a “branch” of the Episcopal Church and Diocese).

52. See *Episcopal Church Prop. Litig.*, 2008 Va. Cir. LEXIS 22, at *21–78 (detailing the doctrinal clash leading to the separation); *id.* at *80–87 (outlining the congregations' argument that a “division” had occurred within the meaning of the statute).

53. See *supra* note 38 and accompanying text.

54. See *Episcopal Church Prop. Litig.*, 2008 Va. Cir. LEXIS 22, at *22–29 (identifying this shift as the “[g]enesis of the [c]onflict”).

55. This issue is not new. See DAVID L. HOLMES, A BRIEF HISTORY OF THE EPISCOPAL CHURCH 170–71 (1993) (discussing church disputes stretching back to the 1970s about the place of gays in the church).

56. See ELIZABETH ADAMS, GOING TO HEAVEN: THE LIFE AND ELECTION OF BISHOP GENE ROBINSON 4–5 (2006); Jonathan Finer, *Episcopalians Consecrate First Openly Gay Bishop*, WASH. POST, Nov. 3, 2003, at A1 (chronicling Bishop V. Gene Robinson's installation).

cese/ECUSA.⁵⁷ It is, however, a major decision that could be thought to have been the final dispute that guaranteed the eventual break.

At the center of the dispute about the role of gays in the church is the interpretation of Scripture. The two groups appear to interpret the Bible differently. The Old Testament book Leviticus condemns homosexual behavior and adultery as sinful and as cause for the death of participants in such activity.⁵⁸ New Testament language mentions homosexuality and calls generally for abstention from sexual immorality.⁵⁹ What this and similar language means for today is at the heart of the dispute between the groups. Of course, neither group takes all of this language literally.

The breakaway parishes tend to view the language in the Bible regarding homosexuality as the last word on the appropriateness of elevating gays to positions of authority in the church.⁶⁰ Biblical language that suggests that homosexual activity is sinful arguably suggests that those who engage in such behavior openly and without the recognition of its sinfulness are not fit to serve as bishops in God's church. According to the breakaway parishes, those who do not read the biblical passages similarly are literally unorthodox.⁶¹ The refusal of the ECUSA to read a number of other biblical passages in a similar fashion marks the ECUSA, according to the breakaway parishes, as unorthodox and an inappropriate receptacle for Anglican authority in the

57. See HOLMES, *supra* note 55, at 167–70 (noting fractures in the Episcopal church regarding the ordination of women); Jamie Deal, *Schism on the Horizon*, WKLY. STANDARD, Jul. 5, 2006, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/397abmpd.asp> (discussing the possible fallout from ECUSA's 2006 selection of Katharine Jefferts Schori as its first female presiding bishop).

58. See *Leviticus* 18:22 (New International Version) (“Do not lie with a man as one lies with a woman; that is detestable.”); *Leviticus* 20:10 (New International Version) (“If a man commits adultery with another man's wife—with the wife of his neighbor—both the adulterer and the adulteress must be put to death.”); *Leviticus* 20:13 (New International Version) (“If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads.”).

59. See, e.g., *Acts* 15:29 (New International Version) (suggesting abstention from sexual immorality); *Romans* 1:26–32 (New International Version) (noting many sinful activities including various sexual activities).

60. See Al Webb, *Anglican Schism Feared over Gays Archbishop Cautions Clerics*, WASH. TIMES, Feb. 24, 2005, at A1 (noting a citation to the literal language of Leviticus as the source of conservative opposition to the shift within the Episcopal Church). For a discussion of the rancor accompanying discussion of the role of gays in the Episcopal Church and other denominations, see ADAMS, *supra* note 56, at 113–18.

61. See Al Webb, *Anglican Schism Feared over Gays Archbishop Cautions Clerics*, *supra* note 60.

United States.⁶² It is clear that the breakaway parishes believe they are reading passages through the lens of Christ's ministry.

Not surprisingly, those who tend to support the decision of the ECUSA General Convention with respect to Bishop Robinson tend to view the Bible passages differently.⁶³ They tend to read the passages in context and through their vision of Jesus Christ's ministry. That is, the passages most widely cited by the dissenters to support a limited role for gays in today's Episcopal Church tend to be in close proximity to passages that condemn behavior that would never be considered justifiable reasons to limit the role of those engaging in such behavior in today's Episcopal Church.⁶⁴

Whether the breakaway parishes are correct or whether the ECUSA is correct about the proper role of gay people in the church is not important to this Essay. What is important is the fact that neither group is willing to take the Bible at its literal word.⁶⁵ The question both groups consider is not whether to ignore some parts of the Scrip-

62. The role of women in the church is also a problematic issue for the breakaway parishes. Some New Testament language suggests a very small role for women in the Church. See 1 *Corinthians* 14:34–35 (New International Version) (noting that women ought not speak in church); see also SPONG, *supra* note 4, at 5–6 (expanding on the passage). Though some in the breakaway groups do not see women as able to hold the same positions of authority in churches as men can, it is not clear that they take the fully “orthodox” position that women should simply be quiet in church. Even the Church of England, the mother of Anglicanism, has approved the consecration of women as bishops. *Women Bishops Approved by Church of England's General Synod*, EPISCOPAL LIFE ONLINE, July 8, 2008, available at http://www.episcopalchurch.org/79901_98698_ENG_HTML.htm.

63. Of course, the Anglican Church itself was created in part because of disagreements about biblical interpretations. See HOLMES, *supra* note 55, at 179–94 (detailing the dispute regarding Henry VIII's inability to receive an annulment of his marriage to Catherine of Aragon, resulting in the formation of the Anglican Church).

64. See, e.g., *Leviticus* 19:19 (New International Version) (prohibiting the planting of two kinds of seed in the same field); *Leviticus* 19:27 (New International Version) (concerning the cutting of one's hair and beard). Though some might claim that *Leviticus* 19 does not state the prohibitions in that chapter as strongly as the prohibitions against homosexuality in *Leviticus* 20, *Leviticus* 19 includes commandment-level admonitions such as do not steal and do not lie. See *Leviticus* 19:11 (New International Version). This would suggest that the violation of any of the admonitions in the chapter would be sinful. Of course, *Leviticus* 20 includes admonitions about sexual activity and infidelity that might leave some Episcopal priests in deep theological trouble. See, e.g., *Leviticus* 20:10 (New International Version) (prohibiting adultery under penalty of death); *Leviticus* 20:18 (New International Version) (prohibiting intercourse during menstruation under penalty of banishment). New Testament passages often speak generally about sexual immorality and other sinful behavior rather than solely about homosexuality. See, e.g., *Acts* 15:23–29 (New International Version) (including dietary restrictions with sexual restrictions); *Romans* 1:28–32 (New International Version) (noting a wide variety of sinful behavior unrelated to homosexuality).

65. Rebellious children should rejoice. See WEBBER, *supra* note 15, at 48 (“The [Bible's] . . . instructions . . . to stone a disobedient son (Deuteronomy 21:18–21) should give us pause in simply quoting the Bible to justify our actions.”).

tures, but which passages to ignore and precisely how to ignore them. Both the ECUSA and the breakaway parishes ignore aspects of the implications of the Levitician prohibition on homosexuality.⁶⁶ Similarly, both groups ignore the prohibitions in Leviticus regarding behavior neither group views as sinful.⁶⁷ Both groups would claim to be orthodox in their reading of the Bible, and that is the point. Ignoring text that does not fit with Christ's ministry is not terribly problematic under the Christian model of biblical interpretation posited here.⁶⁸

IV. CHRISTIAN CONSTITUTIONAL INTERPRETATION

A. *The Primacy of the Civil War and the Reconstruction Amendments*

With respect to the Constitution, the Civil War and the Reconstruction Amendments passed in its wake are the most salient comparators to Jesus' life and ministry. The Civil War is probably the most traumatic and transformative event the nation has endured. Indeed, it was the deadliest war the United States has ever suffered.⁶⁹ Its memory continues to haunt us and inspire scholarship. That the Civil War tore the nation and its governing structure apart at a fundamental level explains why it must be considered the seminal event in American constitutional history. The Civil War and its aftermath was similar in effect to Christ's coming in that for many it challenged and changed the rules of society while rebuilding that society on a similar, but somewhat different, foundation. To some, the Civil War altered the trajectory of the Constitution. For others, the post-Civil War Constitution is completely different than the pre-Civil War Constitution.⁷⁰

66. It is doubtful that the breakaway parishes would espouse the command of *Leviticus* 20:13 to put homosexuals to death.

67. It is doubtful that either the Diocese or breakaway parishes view the wearing of clothing that blend wool and linen to be sinful. See *Leviticus* 19:19 (New International Version) ("Do not wear clothing woven of two kinds of material.").

68. See SPONG, *supra* note 4, at 6. Bishop Spong discusses biblical limitations on the participation of women in church:

If this passage is taken literally, if the Bible is regarded as the "inerrant word of God," then no woman can sing in a choir, participate in a liturgy, teach Sunday school, or be ordained as a pastor or a priest. Churches with women participating in any of these areas, and that includes every church in Christendom on some level, have thus ignored, reinterpreted, dismissed, or relativized these biblical passages.

Id.

69. See GARRET EPPS, *DEMOCRACY REBORN* 19 (2006) (observing that the Civil War was "a holocaust that consumed the lives of 620,000 men in uniform . . . and that count is woefully incomplete").

70. See LEVINSON, *supra* note 6, at 139 ("The conflict of 1861, among other things, divides our constitutional history, and some historians refer to the 'first' and 'second' Constitutions. The first Constitution—that of 1787—was predicated, among other things, on

Even though much of the text of the pre-Civil War Constitution survived unaltered, the implications flowing from that language significantly changed.⁷¹ The post-Civil War Constitution looks at people, citizens, the states, and the nation differently than the pre-Civil War Constitution did.⁷²

If the Civil War can be likened to Christ's coming, the Reconstruction Amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution—can be analogized to Christ's ministry and teaching. Ultimately the Union was stitched back together through the Reconstruction Amendments. The Thirteenth Amendment abolished slavery.⁷³ The Fourteenth Amendment, *inter alia*, made former slaves and their progeny citizens and required that they be provided the equal protection of the laws.⁷⁴ The Fifteenth Amendment outlawed denying the right to vote based on race.⁷⁵ Through their language and subsequent interpretation, the Reconstruction Amendments introduced a formal equality that created a single mass of equal citizens who were all to be given the same legal and civil rights under the Constitution. Though the language of the Reconstruction Amendments only appears to provide explicitly for the full equality of former male slaves given its language with respect to suffrage, its principles suggest an equality of citizenship the breadth of which had never been seen in the United States.⁷⁶

In similar fashion, the Reconstruction Amendments transformed and realigned the role and prerogatives of states in the federal system. The states remained sovereign in some respects. However, their role

federalism and recognition of slavery; the second Constitution, on an enhanced national government and individual liberty.”); Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 4 (1987) (“[T]he Constitution did not [survive the Civil War]. In its place arose a new, more promising basis for justice and equality, the fourteenth amendment, ensuring protection of the life, liberty, and property of *all* persons against deprivations without due process, and guaranteeing equal protection of the laws.”).

71. Arguably this is no surprise. See Tribe, *supra* note 6, at 86 (noting that in the wake of constitutional amendment, “constitutional provisions sometimes acquire new meanings by the very process of formal amendment to other parts of the Constitution, even when the words contained in the provision at issue remain unchanged and when only surrounding text has been altered”).

72. See Christopher L. Eisgruber, *The Fourteenth Amendment's Constitution*, 69 S. CAL. L. REV. 47, 101 (1995) (noting the audacity and breadth of the Fourteenth Amendment).

73. U.S. CONST. amend. XIII.

74. U.S. CONST. amend. XIV.

75. U.S. CONST. amend. XV.

76. Whether the promise of the language has truly been fulfilled is unclear. See Eisgruber, *supra* note 72, at 75–98 (examining instances of the Court's failure to recognize the full impact of the Fourteenth Amendment).

as subservient to, rather than co-equal with, the Union was unquestioned in the wake of the Reconstruction Amendments. The Fourteenth Amendment limited states in their prerogatives regarding how to treat their citizens. The requirement of equal protection to all citizens and the eventual incorporation of most of the Bill of Rights into the Fourteenth Amendment significantly changed the relationship of states to their citizens and limited the state's traditional power to deny equality to certain groups of people subject to the state's jurisdiction. Rather than accept governmental prerogative that allowed governments to choose favorites among groups of citizens, the Reconstruction Amendments demanded equality for citizens with respect to legal rights.⁷⁷

The Reconstruction Amendments can be considered a partial fulfillment of the equality principles presented in the Declaration of Independence and the pre-Civil War Constitution, or a complete break with the past.⁷⁸ The Reconstruction Amendments can be viewed as the fulfillment of equality principles already existent in the American traditions if the Amendments are viewed merely as expanding equality to all those who should always have been considered citizens and to those subject to United States jurisdiction. Conversely, one can argue that the Reconstruction Amendments were a significant break from the past because the limited equality in the founding documents suggested a cramped view of equality that is completely different than the post-Civil War vision of equality.⁷⁹

At the very least, the Reconstruction Amendments were a break from the past as embodied by *Dred Scott v. Sandford*⁸⁰ and all that the

77. See Henry L. Chambers, Jr., *Retooling the Intent Requirement Under the Fourteenth Amendment*, 13 TEMP. POL. & CIV. RTS. L. REV. 611, 611–12 (2004) (asserting that the Fourteenth Amendment, under modern interpretations, “appears to require evenhandedness whenever the government acts” (citing *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985))).

78. Even the Reconstruction Amendments did not fully deliver equality. See Henry L. Chambers, Jr., *Colorblindness, Race Neutrality, and Voting Rights*, 51 EMORY L.J. 1397, 1405–07 (2002) (explaining that the Thirteenth and Fourteenth Amendments provided for a narrow set of legal rights, but did not include voting rights or other key civil rights); LEVINSON, *supra* note 6, at 189 (noting the 1868 Constitution's failure to guarantee voting rights for women).

79. See BREYER, *supra* note 1, at 11 (noting that the Warren Court “consider[ed] how the Civil War amendments (and later amendments) had changed the scope of pre-Civil War constitutional language, that is, by changing the assumptions, premises, or presuppositions upon which many earlier constitutional interpretations had rested”); LEVINSON, *supra* note 6, at 140 (“There can be little doubt that the so-called Civil War Amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments—partake of at least a limited constitutional revolution.”).

80. 60 U.S. (19 How.) 393 (1857).

pre-Civil War Constitution's acceptance of slavery and the Slave Power represented.⁸¹ However viewed, the principles of equality hinted at in our founding documents have been largely fulfilled in the fullness of time and subsequent interpretation of the Constitution.⁸² Whether one views the Reconstruction Amendments as the fulfillment, distillation, or destruction of what went before, they are the fundamental bases on which the American polity is now based. To the extent that the Constitution can be viewed through a particular set of principles, the equality principles underlying the Reconstruction Amendments—the full equality of citizens and relative equality of non-citizens—would be the most reasonable lenses through which to interpret the Constitution.⁸³

B. Filling Interstices and Ignoring Constitutional Text

Interpreting the Constitution through a small set of principles is not an odd concept. Attempting to bring coherence to the Constitution is sensible, given that the Constitution and constitutions exist for a general purpose.⁸⁴ There may be differences of opinion regarding

81. See AKHIL REED AMAR, *THE BILL OF RIGHTS* 294 (1998). Professor Amar observes the following:

But the Reconstruction [Fourteenth] Amendment did begin with an affirmation of the freedom, and citizenship, of all. Those who birthed it renounced the Slave Power and all its works. These midwives were women alongside men, blacks alongside whites. After their mighty labors, more work did remain to be done—more work always remains to be done, if all are to be free and equal. But because of these men and women, our Bill of Rights was reborn.

Id. For discussions of the Slave Power, see generally DAVID BRION DAVIS, *THE SLAVE POWER CONSPIRACY AND THE PARANOID STYLE* (1969); LEONARD C. RICHARD, *THE SLAVE POWER: THE FREE NORTH AND SOUTHERN DOMINATION 1780–1860* (2000).

82. See generally Henry L. Chambers, Jr., *Dred Scott: Tiered Citizenship and Tiered Personhood*, 82 *CHI.-KENT L. REV.* 209 (2007) (discussing the Reconstruction Amendments' reversal of *Dred Scott's* endorsement of "tiered" citizenship and personhood).

83. See PELIKAN, *supra* note 7, at 22 (noting the Thirteenth and Fourteenth Amendments and the Equal Protection Clause as key clauses in interpreting in the Constitution). Some might choose somewhat different principles as the lenses. See BREYER, *supra* note 1, at 5 ("My thesis is that courts should take greater account of the Constitution's democratic nature when they interpret constitutional and statutory texts."); SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION* 13 (2006) ("It is regrettable that law professors rarely teach and that courts rarely cite the Preamble, for it is *the single most important part* of the Constitution It is indeed the ends articulated in the Preamble that justify the means of our political institutions.")

84. See BREYER, *supra* note 1, at 6. Justice Breyer explains this view:

[M]y thesis . . . finds in the Constitution's democratic objective not simply restraint on judicial power or an ancient counterpart of more modern protection, but also a source of judicial authority and an interpretive aid to more effective protection of ancient and modern liberty alike. It finds a basic perspective that helps make sense of our Constitution's structure, illuminating aspects that otherwise seem less coherent.

what set of principles ought to be chosen and what the Constitution's general purpose is, but there is a legitimacy to attempting to read the document holistically with overarching principles providing interpretive help.⁸⁵ Of course, some may argue that constitutional interpretation is merely about reading clauses to determine what they mean.⁸⁶ When care is not taken, however, particularly when phrases appear clear, interpreting the phrases can mean little more than determining what they say rather than what they mean.⁸⁷ Overarching principles may be necessary to apply a clause properly when the clause is to be used to support a policy goal.⁸⁸ This is standard constitutional interpretation.

Filling the interstices of the Constitution with interpretations consistent with the Reconstruction Amendments' overarching principles is also sensible. Ignoring prior case law while filling any interstices that exist in constitutional text, including the Reconstruction Amendments, may be necessary or appropriate.⁸⁹ This might upset those

Id. The Preamble to the Constitution may also qualify as giving a purpose to the Constitution. See LEVINSON, *supra* note 83, at 13 ("In any event, I am happy to endorse the Preamble as the equivalent of our creedal summary of America's civil religion.").

85. See BREYER, *supra* note 1, at 115 (viewing the Constitution "as a single document designed to further certain basic general purposes as a whole"); see also LEVINSON, *supra* note 6, at 150 ("The main body of [Walter] Murphy's argument contends that the Constitution is essentially oriented around the value of protecting human dignity. This constitutionalism is an important limit to the value of majority rule precisely because it incarnates a value hierarchically superior to majority rule.").

86. This view tends to lose salience fairly quickly, however. See POST, *supra* note 6, at 25 ("[I]f for any reason that [constitutional] meaning has become questionable, it is no help at all to instruct a judge to follow the 'plain meaning' of the constitutional text. A meaning that has ceased to be plain cannot be made so by sheer force of will.").

87. This also commonly arises in biblical interpretation:

[W]hen we find the Bible saying, "An eye for an eye and a tooth for tooth," we can read it as a bloodthirsty law to be ignored (which makes large parts of the Bible irrelevant), an unchanging standard to be enforced in our modern penal code (which puts us back to a pre-Christian world), or we can learn through further study that this command was a step forward for a world whose usual rule was unlimited vengeance (e.g., a life for an eye), and that it was a rule superseded in its turn by Jesus' injunction to turn the other cheek (Matthew 5:39).

WEBBER, *supra* note 15, at 48–49.

88. See POST, *supra* note 6, at 25 ("If the [constitutional meaning of a clause is not plain], the question of constitutional meaning cannot be resolved by staring harder at the ten words of the clause. What is required instead is a means of interpreting the text so as to mediate between the clause and its application.").

89. Filling interstices with principles rather than judge-made precedent may be sensible. See Mary Ann Glendon, *Comment*, in A MATTER OF INTERPRETATION, *supra* note 1, at 95, 107–08 (noting that when faced with gaps in the Constitution, American judges' "instinct was to fill gaps or ambiguities in the text (statutory or constitutional) with judge-made common law, rather than to search first, as a civil lawyer would, for guiding principles in the structure and design of the instrument"). Of course, precedent may have its place:

who claim the primacy of settled constitutional meaning as ultimate constitutional meaning, but so be it.⁹⁰ Consider how the intent to discriminate under the Fourteenth Amendment ought to be treated under the posited vision of constitutional interpretation.⁹¹ The Fourteenth Amendment is silent regarding whether the intent to discriminate is necessary for its own violation. In interpreting the Fourteenth Amendment to determine whether its violation requires the intent to discriminate, a court applying the mode of interpretation suggested above would ask whether the known principles of the Reconstruction Amendments illuminate whether the Fourteenth Amendment should be interpreted to require the intent to discriminate.⁹² In taking this approach to the Fourteenth Amendment violation, it is possible that the intent to discriminate would not be required for a constitutional violation to occur.⁹³

Filling interstices with material consistent with core principles is reasonable once the principles are identified.⁹⁴ Christian constitu-

Both the history of the American Republic and the history of the Christian Church make it clear that, alongside the authority of their original charters and in continuous interaction with that authority, the ongoing and cumulative interpretations of the Great Code in the form of tradition and precedent have come to occupy a privileged position of authority in their own right.

PELIKAN, *supra* note 7, at 115.

90. See Scalia, *supra* note 1, at 39–42 (criticizing the evolution of constitutional meaning from age to age).

91. See WEBBER, *supra* note 15, at 48 (“The Anglican position . . . is that we should require no beliefs except what we are persuaded can be solidly based on the Scriptures, but we are free to adopt beliefs and customs that seem consistent with scriptural witness even though they may not be directly stated.”).

92. A self-reference to the Fourteenth Amendment’s principles in determining its meaning is simply an attempt to determine its scope. It is little different from the attempts to determine the Second Amendment’s scope through its introductory clause. See U.S. CONST. amend. II (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”); *District of Columbia v. Heller*, 128 S. Ct. 2783, 2789–90, 2799–802 (2008) (examining the effect of the Amendment’s opening clause).

93. See Chambers, *supra* note 78, at 1414–15 (discussing discriminatory intent under the Fourteenth Amendment).

94. Filling interstices or areas of uncertainty can lead to results that may appear to contradict the received meaning of text. Laurence H. Tribe makes the following argument:

Like nearly everyone, I agree, for instance, that the Supreme Court’s 1954 decision that official school segregation by race violates equal protection correctly interprets what the Fourteenth Amendment says (and *always* said)—even though it may well defy what the amendment’s authors and ratifiers expected the amendment to do—and indeed I agree that the authors and ratifiers themselves may well have intended to enact a provision that might, in light of its broad language and its uncertain reach, end up condemning some of what they then regarded as entirely just and proper.

Tribe, *supra* note 6, at 68.

tional interpretation would go further. As text gets clearer, the problem of text clashing with principles becomes starker and more problematic.⁹⁵ Some may be troubled by text losing out to principles.⁹⁶ However, if the principles and purposes of the Constitution are frustrated because the constitutional text or understandings have been overtaken by subsequent events, such as the Civil War, it may be worthwhile to revisit even the clearest constitutional text to determine if it must still mean what it seems to mean or seemed to have meant in the past.⁹⁷ That is, even when the text can be made to appear clear or is clear, it may be worthwhile to reconsider it in context if it is going to be applied as a rule of decision.

Given the tension between American constitutionalism before the Civil War and American constitutionalism after the Reconstruction Amendments, some of the principles underlying the Reconstruction Amendments may conflict with some constitutional text. The question is what that means for constitutional interpretation. The answer may be that the principles underlying the Reconstruction Amendments are so fundamental to the constitutional order that they must prevail over contrary text. If so, constitutional text that is inconsistent with the Reconstruction Amendments' principles would need to be reinterpreted to be consistent with the Reconstruction Amendments or be ignored. Under the constitutional interpretation noted above, the principles underlying the Reconstruction Amendments would not merely be some of a number of principles that should illuminate constitutional interpretation. They would be the primary principles that must illuminate constitutional interpretation. Consequently, in reviewing constitutional text, the existence of clear constitutional text would not mean that the text would be used to make actual decisions. The words would not be literally excised from

95. See PELIKAN, *supra* note 7, at 76–78 (noting that whether the spirit of a document ought to prevail over the letter of a text when the spirit and letter of the text appear inconsistent is a constant problem in interpreting texts).

96. See Scalia, *supra* note 1, at 46 (“For the evolutionist, on the other hand, every question is an open question, every day a new day. No fewer than three of the Justices with whom I have served have maintained that the death penalty is unconstitutional, *even though its use is explicitly contemplated in the Constitution.*”).

97. The need to reconsider what prior written text really means in light of subsequent developments also occurs in the biblical context:

[T]his New Testament precedent of interpreting prophecy in the light of subsequent history was the foundation for the ongoing exegetical task. It required considerably less specificity to move from this belief in prophecy-and-fulfillment to the method of interpretation by which later events were seen not as fulfillments in the strict sense of the word but as particular *exempla* illustrating a general biblical promise or warning.

PELIKAN, *supra* note 7, at 44.

the Constitution, but they would be treated as nullities when making actual decisions.

For example, the principles underlying the Reconstruction Amendments require equality for all American citizens. The Constitution, however, through its eligibility requirements to hold certain federal offices, clearly limits the equality that is supposed to be extended to citizens. The eligibility requirements require that the President of the United States be a natural born citizen, at least thirty-five years old, and a resident of the United States for at least fourteen years.⁹⁸ Those electoral qualifications could be reinterpreted in a “Christian” constitutional regime.

Consider how the interpretive regime could be applied to resolve an unclear legal issue, such as the one raised during the 2008 presidential campaign regarding whether Senator John McCain is a natural born citizen of the United States.⁹⁹ The argument is that Senator McCain is not a natural born citizen because he was born in the Panama Canal Zone at a time when that territory was not clearly treated as United States territory for purposes of birthright citizenship, and when birth to United States citizens was not enough to make one a natural born citizen.¹⁰⁰ What it means to be a natural born citizen would appear to be the relevant question. The interpretive regime noted above, however, would require that the natural born requirement be interpreted in a way that would be consistent with the Reconstruction Amendments’ equality principles.¹⁰¹ Thus, even if standard interpretive methods would seem to conclude that Senator McCain is not a natural born citizen, if that interpretation conflicted with equality principles, that interpretation would not control whether Senator McCain would be eligible to serve as president. This use of the Reconstruction Amendments’ principles could be considered acceptable to the extent that the principles could be deemed to have been used merely to interpret ambiguous or unclear text.

Using the Reconstruction Amendments’ principles to trump clear text would be far more controversial. For example, assume the nomination of a thirty-year-old for the presidency. Given the constitu-

98. U.S. CONST. art. II, § 1.

99. See Gabriel J. Chin, Commentary, *Why Senator John McCain Cannot be President: Eleven Months and a Hundred Yards Short of Citizenship*, 107 MICH. L. REV. FIRST IMPRESSIONS 1 (2008), <http://www.michiganlawreview.org/firstimpressions/vol1107/chin.pdf>, for a full discussion of the issues.

100. *Id.* at 1–2.

101. Some view the requirements simply as undemocratic. See, e.g., LEVINSON, *supra* note 83, at 142–50 (criticizing the age, duration of citizenship, and residency requirements for holding congressional office).

tional text regarding presidential qualifications, the proper question would appear to be whether the nominee is younger than thirty-five years of age. If this is the question and the nominee is thirty years old, no amount of interpretation would allow the nominee to prevail.¹⁰² Under the interpretive regime above, however, the question is whether the result that flows from the application of the qualifications text is consistent with the Reconstruction Amendments' equality principles. If the answer is no, the nominee would be allowed to run and, if elected, serve as president. The age requirement would not necessarily be excised from the Constitution. Indeed, it might legitimately guide decisions of citizens regarding whether to vote for the thirty-year-old presidential candidate in the same way that biblical text that is not taken literally may still be considered a basis for making a decision or for viewing the world. The text would merely be unable to serve as a basis for a legal challenge to the actual election of the presidential candidate.

The examples above merely scratch the surface of the constitutional text that could be ignored or heavily reinterpreted through the vision of a type of constitutional interpretation noted above. Certainly, this form of interpretation could devolve into a parlor game of finding the constitutional provision one likes least and trying to excise it or have it ignored.¹⁰³ That is not the point of this exercise, however, any more than the point to biblical interpretation is to create a similar parlor game featuring biblical passages that its players do not like. Rather, the point is to consider what a constitution, the Constitution of the United States, really means. If the Constitution is literally just a mass of words that creates a government and governs those subject to it based on its commands, so be it. If, however, it is supposed to provide a way or vision of living, it should be made as consistent as possible with the way of living it embodies. If that requires ignoring particular passages that do not fit the way of living reflected in the core of the document embodied in the Reconstruction Amendments, so be it.

102. See Tribe, *supra* note 6, at 93 (suggesting that a faithful interpreter cannot find a way around some constitutional provisions such as "the rule that the president must be thirty-five years of age").

103. Of course, constitutional law scholars could spend a pleasant evening detailing the Constitution's deficiencies. See LEVINSON, *supra* note 83, at 167–68 (listing some of the Constitution's "truly grievous defects").

V. CONCLUSION

The simple notion underlying the Christian constitutional interpretation noted above is that the principles underlying the Constitution define who Americans are as a people. In the same way that a Christian biblical interpretation focuses on core biblical principles and interprets that holy text through its core principles, a Christian constitutional interpretation could proceed by discovering core constitutional principles and applying those principles to that text. That clear text found its way into the Constitution is arguably an insufficient reason to use it as a rule of decision if it is not consistent with the principles that illuminate the entire Constitution and reflect who Americans are and who Americans want to be. Some may deem the Constitution and all of its clear text the full and only reflection of who Americans are and who Americans want to be. For those people and maybe many others, this Christian constitutional interpretation would be anathema. Rather than looking for overarching principles, they would focus on the meanings of specific clauses even if to the detriment of a holistic interpretation of the document. Nonetheless, theirs is a faithful interpretation of the Constitution. Others may prefer that the Constitution—the foundational document of our federal government and our liberty—be interpreted to reflect who Americans want to be. At the least, they may prefer that the Constitution reflect who we want to be whenever the document's text is used to resolve actual disputes.

The Christian constitutional interpretation noted above would require a willingness to ignore clear constitutional text, coupled with the willingness to interpret uncertain constitutional text through the lens of core Reconstruction Amendment principles. This is not simply about constitutional amendment outside of Article V or repeal by implication or a somewhat aggressive results-driven interpretation of the Constitution.¹⁰⁴ A Christian constitutional interpretation is about treating the Constitution as a text that must conform to American principles already deeply embedded in the Constitution. It could help eliminate some of those constitutional stupidities a group of wise professors once cataloged.¹⁰⁵ The interpretive regime noted may be impossible to achieve or simply unwise. However, it is worthwhile to consider in that it suggests an alternative, but faithful, interpretation of the Constitution.

104. *See id.* at 22 (noting that some have argued that the Constitution has been radically altered outside of the Article V amendment process).

105. *See generally* CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES (William N. Eskridge, Jr. & Sanford Levinson eds., 1998).